Cruger (1881) 84 N. Y. 619. Certainly the fact that a benefit incidental to the actual public improvement is included in the estimate does not violate the principle that the assessment shall not exceed the benefit. If the property owner has received an equivalent, it should be of no moment to him from what source the benefit arose so long as there is a public improvement. The legislature may therefore direct the performance of some other work along with that for which the public money is expended and direct that benefits accruing from the former be included with those arising from the latter in ascertaining whether the assessment exceeds the benefit. The taxing power is purely a matter for legislation, and the legislature may exercise its power without question by the courts so long as its action is not manifestly merely colorable or arbitrary and does not amount to confiscation of property.

AGENT'S KNOWLEDGE OF BREACH OF RESTRICTIONS OF AN INSURANCE POLICY AT ITS INCEPTION.—The United States Supreme Court has recently handed down an important decision, which refuses to recognize the well established New York doctrine of *Van Schoick* v. *Niagara Fire Ins. Co.* (1877) 68 N. Y. 434. A policy containing a provision against other insurance was issued to an applicant, who had prior insurance to the knowledge of the insurer's agent. Parol evidence of the agent's knowledge was deemed inadmissible. *Northern Assurance Co.* v. *Grand View Building Association* (1902) 22 Sup. Ct. 133. The court asserts that the mode of reasoning of the New York cases "overlooks both the general principle that a written contract can not be varied by parol evidence and the express provision that no waiver shall be made by the agent except in writing, indorsed on the policy."

The position of SHIRAS, J., on the first objection seems unassailable. In *Van Shoick* v. *Ins. Co.*, *supra*, it was held that the company would be *estopped* to set up a restriction known to its agent to be broken when the policy was delivered and premium paid. It is clear that the ordinary elements of estoppel are wanting since there is no reliance on any representation of a fact, unknown to the insured. *Franklin Ins. Co.* v. *Martin* (1878) 40 N. J. L. 568. Moreover it can not be treated as a waiver of a condition of the contract since a condition assumes that the contract has come into existence. Langdell, Summ. of Cont. § 28. Nor does a court of law thus accomplish what a court of equity reaches by reformation of an instrument since, no mutual mistake existing, no ground for reformation in equity arises. *Shannon* v. *Gore Dist. Mut. Fire Ins. Co.* (1878) 2 Ont. App. Rep. 396; *Commonwealth Ins. Co.* v. *Huntzinger* (1881) 98 Pa. St. 181. So on common law principles, the case at hand seems right.

However, the further objection of want of authority in the agent to waive is hardly tenable and is based on a misconception of the New York decisions. The knowledge of an agent to secure infor-

mation is held the knowledge of the insured. Assuming that such knowledge can be shown by parol evidence to strike out a restriction, the authority of an agent to waive conditions of the policy is not involved. The company, by authorizing an agent to receive information, binds itself by his knowledge. So the New York courts have logically held. *Wood* v. *American Fire Ins. Co.* (1896) 149 N. Y. 382. On the other hand, in cases where facts subsequent to the issuing of a policy are known to the agent, his authority to waive a condition is in question. His power to do it only in fixed ways is a fair provision and will be enforced. *Baumgartel* v. *Ins. Co.* (1892) 136 N. Y. 547. The New York doctrine seems a justifiable bit of judicial legislation. A practical and just exception to the parol evidence rule may well be taken in insurance policies, which contain many and complex warranties, proceed wholly from the company and are issued through zealous agents. This anomalous view, at least, has produced satisfactory results. It has met with favor in Connecticut, *McGuirk* v. *Hartford Fire Ins. Co.* (1888) 56 Conn. 528, and generally in the Western States. May on Ins. 4th ed. §33A. Nor is the criticism of indefiniteness well taken. From its nature the so-called estoppel or relinquishment operates to cut out warranties of the policy and cannot raise a new term. *Landers* v. *Cooper* (1889) 115 N. Y. 279. It should not be applied to cases of collusion between the insured and the agent. *National Life Ins. Co.* v. *Murch* (1873) 53 N. Y. 144. The clear rule has become somewhat unsettled by the recent case of *Skinner* v. *Norman* (1901) 165 N. Y. 565, holding that an agent's promise to get information was the constructive knowledge of the insurer. See criticism in 1 COLUMBIA LAW REVIEW, 262. It is interesting to note that the Texas court has intimated that the warranty is suspended for a reasonable time, if its terms may easily be complied with. *Germania-American Ins. Co.* v. *Evants* (1901) 61 S. W. 536.

The decision most relied on by the insured in the principal case was *Union Mut. Ins. Co.* v. *Wilkinson* (1871) 13 Wall. 222. In that case the applicant stating his ignorance of material facts, the agent erroneously filled in the application. Parol evidence of the statements of the insured were admitted to prove that the representations were, in reality, those of the agent, and the insurer was estopped to set up its defence. This was affirmed in *Ins. Co.* v. *Mahone* (1874) 88 U. S. 152, and *N. J. Mut. Life Ins Co.* v. *Baker* (1876) 94 U. S. 610, and limited in *N. Y. Life Ins. Co.* v. *Fletcher* (1886) 117 U. S. 519, to cases of no negligence in the insured and good faith on the part of the agent, where no limitation of his authority was conveyed to the insured. On this narrow ground very little is left of the decision. The principal case tries to distinguish it "as in legal effect a denial of the execution of the statement." The application, adopted by the insured, should on common law principles have been conclusively presumed to contain representations of the insured. See *Franklin Fire Ins. Co.* v. *Martin, supra.* It seems that the Wilkinson case cannot be reconciled with

the decision at hand. As a result of the principal case, the insured will be forced to sue in the State of the defendant company to prevent removals to the United States courts. *Dewees* v. *Batchelder Fire Ins. Co.* (1872) 6 Vroom, 366, and *Batchelder* v. *Ins. Co.* (1883) 135 Mass. 449, *accord.*

EXTENSION OF THE RULE PROTECTING TRADE-NAMES.—Unfair competition in business has, in modern times, been restrained in certain ways. The most notable instance arises in regard to trade names; and the courts enjoin the use of a name by one firm calculated to make the public believe that the goods sold under such name are those manufactured by another. *Croft* v. *Day* (1843) 7 Beav. 84. To such an extent is the doctrine carried that, while a man cannot be restrained from using his own name in business, he can be enjoined from using it in such manner as to make it appear that his wares are those put upon the market by another person of similar name. RAPALLO, J., in *Meneely* v. *Meneely* (1875) 62 N. Y. 427. The rule thus set forth is a wise one, calculated to protect the reputation and property of merchants as well as, incidentally, to save the public from imposition. But this rule should cover those cases only where the principle laid down by Lord LANGDALE, M. R., in *Croft* v. *Day*, *supra*, that "No man has the right to sell his own goods as the goods of another" will apply. In *International Committee Young Women's Christian Association* v. *Young Women's Christian of Chicago* (Ill. 1901) 62 N. E. 551, the Supreme Court of Illinois broadens the rule to such an extent that it is hard to tell where the end will be. In that case the Young Women's Christian Association obtained an injunction restraining the use of the name International Committee of the Young Women's Christian Association by another society whose objects were similar. The majority of the court relies solely on the trade-name cases. The dissenting justices disagree because in their opinion the names are distinguishable, and because of the fact that the secretary of state granted a license to the defendant to organize its society under such corporate name. In both opinions it is recognized that these corporations were organized for charitable purposes. Where then is the injury to the plaintiff? It is true that allegations are made that donations, intended for the plaintiff, were by mistake sent to the defendant, although the dissenting opinion considers these allegations as not proved. But even if such mistakes had been made, an organization has not such an interest or property right in gifts about to be conferred as will be protected by a court of equity. And the very facts which are the basis of jurisdiction in the trade-name cases are obviously wanting here. *Croft* v. *Day*, *supra*; *McLean* v. *Fleming* (1877) 96 U. S. 245.

Only one case similar in its facts can be found. *Colonial Dames of America* v. *Colonial Dames of the City of New York* and *National Society of Colonial Dames of America* (N. Y. 1899) 29 Misc.